

RECORDING REQUESTED BY:

Attention: Mr. Lee R. Redmond III  
Kaiser Ventures Inc.  
3633 E. Inland Empire Blvd., Suite 850  
Ontario, California 91764

Recorded in Official Records, County of  
San Bernardino, Larry Walker, Recorder

Doc No. 19990239594  
3:00pm 06/04/99

WHEN RECORDED MAIL TO:

Attention: Peter Garcia  
California Environmental Protection Agency  
Department of Toxic Substances Control  
5796 Corporate Avenue  
Cypress, California, 90630

Chicago Title A # 607

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## COVENANT TO RESTRICT USE OF PROPERTY ENVIRONMENTAL RESTRICTION

(Re: a Portion of the Kaiser Ventures Inc. Mill Site, Operable Unit No. 1,  
Parcel 1 of the NAPA Lots Parcels)

This Covenant and Agreement ("Covenant") has an effective date of May 10, 1999, by and between Kaiser Ventures Inc. and its successors and assigns (the "Covenantor"), the current owner of the subject property to be restricted herein, and the California Environmental Protection Agency, Department of Toxic Substances Control (the "Department"), the government agency with statutory oversight responsibility with respect to hazardous substances response actions and hazardous waste facility regulation at the subject property. The Covenantor and Department may be collectively referred to herein as the "Parties." This Covenant is made with reference to the following facts:

- A. The Restricted Property (as defined below) is a limited portion of the site of the former World War II era Kaiser Steel Mill (13425 San Bernardino Avenue, Fontana), located in the area now generally bounded by Etiwanda Avenue on the west, Whittram Avenue on the north, Cherry Avenue on the east, and Valley Blvd. on the south, County of San Bernardino, State of California (the "Site").
- B. The limited area of the Site to be restricted herein (San Bernardino County Parcel #1 of Parcel Map No. 14757, "Restricted Property"), totaling approximately 5.2 acres, is more particularly described and depicted in Exhibit "A" attached hereto and incorporated herein by this reference. In the past, Covenantor's predecessor in interest (Kaiser Steel Corporation) used the Restricted Property as storage for steel mill recyclable materials and by-products such as mill-scale and slag.
- C. On August 22, 1988, the Department's predecessor in interest (California Department of Health Services) issued to Covenantor's predecessor in interest (Kaiser Steel Corporation) a Consent Order pursuant to California Health and Safety Code ("H&S Code") §§ 205, 25355.1(a)(1)(B), and 25355.5(a)(1)(C). The purpose of this Consent Order was "to ensure that any release or threatened release of a hazardous substance or hazardous waste to the air, soil, surface water and ground water at or from the Facility [i.e., the Site] is thoroughly investigated and that appropriate remedial actions are taken." An amended Consent Order was signed by Covenantor and the Department on January 11, 1999 pursuant to H&S Code §§ 25187, 58009 and 58010. In furtherance of the amended Consent Order, pursuant to the Department's applicable statutory authority referenced therein and elsewhere, the Department is requiring this Covenant as part of the remedial actions at the Site.
- D. Pursuant to Chapter 6.65 of Division 20, the Department was designated the Administering Agency for the Site by the Site Designation Committee within the California Environmental Protection Agency on October 2, 1995.

- E. As of 1999, land within a two (2) mile radius of the Restricted Property supports a mixture of primarily industrial and low-density residential uses. On approximately 530 acres to the east of the Restricted Property, lies a motor sports complex- the California Speedway. There is also a considerable amount of vacant, currently unproductive agricultural land near the Restricted Property for which industrial development is planned. The nearest residences to the Restricted Property are located approximately 2,500 feet to the northwest of the center of the Restricted Property, with the nearest sensitive population being an elementary school located 7,500 feet to the northeast of the border of the Restricted Property.
- F. All or a portion of the surface and subsurface soils of the Restricted Property contain hazardous substances and hazardous materials as defined in H&S Code §25260 ("Hazardous Substances") which include or may include one or more of the metal and polynuclear aromatic hydrocarbon contaminants of concern, as follows: anthracene, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(g,h,i)perylene, benzo(k)fluoranthene, chrysene, dibenzo(a,h)anthracene, fluoranthene, indeno(1,2,3-c,d)pyrene, pyrene, and these metals above Site background values: antimony, beryllium, cadmium, chromium, cobalt, copper, molybdenum, nickel, thallium, vanadium and zinc.
- G. Covenantor, in compliance with applicable law, and under the supervision and authority of the Department, is undertaking a response action ("Response Action") at several areas of the Site, which response action Covenantor asserts is in compliance with applicable requirements of the National Contingency Plan (40 C.F.R. § 300, *et. seq.*). During implementation of the *Draft Remedial Action Plan, Tar Pits Area, Kaiser Resources, Fontana, California, August 1993* ("RAP"), it became apparent that remedial goals chosen in the RAP were not practical for the Restricted Property. To provide a basis for establishing revised remediation goals, Covenantor, completed a *Removal Action Workplan, Residual Waste Material (PAH-Affected Soils) at the NAPA Lots and Household Recycling Parcel Operable Unit No. 1 Kaiser Ventures Inc. Fontana, California, May 29, 1998* (the "RAW"). The RAW was approved by the Department on June 30, 1998. Covenantor completed the removal action at the Restricted Property and prepared a *Report of Removal Action, Residual Waste Material (PAH-Affected Soils) at the NAPA Lots -Operable Unit No. 1 Kaiser Ventures Inc. Fontana, California, March 30, 1999* (the "RRA"). RRA concluded that much of the residual soil contaminants at the Restricted Property are within a discretionary, acceptable range of risk for an industrial land use, and that land uses should be restricted as provided in this Covenant. On April 19, 1999, the Department approved the RRA and issued a Letter of No Further Remedial Action Required.
- H. This Response Action for the Restricted Property has been done in compliance with the California Environmental Quality Act (Pub. Resources Code, §21000 *et. seq.*, "CEQA"). The Department completed an Initial Study and then a Negative Declaration which was ultimately approved. The Department filed a Notice of Determination, completing the CEQA process on June 30, 1998.
- I. The RAW requires this deed restriction and remediation of the soils to a level consistent with industrial end land use. As of this time, the Department requires no further Response Action for the Restricted Property other than the recording of this Covenant.
- J. This Covenant does not nullify or otherwise modify any releases from liability granted by the Department pursuant to H&S Code §§ 25364 and 25364.1 or other law of similar import.
- K. Pursuant to California Civil Code §1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in H&S Code §25260.

#### ARTICLE I PARAMETERS OF COVENANT

1. Restrictions to Run With the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), upon and subject to which the Restricted Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every of the Restrictions: (a) shall run with the land, (b) shall inure to the benefit of and pass with each and every portion of the Restricted Property, (c) shall apply to and bind the respective successors in interest to the Restricted Property, (d) are for the benefit of, and shall be enforceable by, the Department, (e) are imposed upon the entire Restricted Property unless expressly stated as applicable only to a specific portion thereof.

2. Concurrence of Owners/Occupants. Each and every owner ("Owner" shall mean the Covenantor or its successors in interest, including heirs and assigns, who hold title to all or any portion of the Restricted Property) and occupants ("Occupants" shall mean lessees or other possessors of any portion of the Restricted Property whose occupancy has a significant likelihood of violating the Restrictions) shall be deemed to be in accord with this Covenant and shall further be deemed to unconditionally agree, for and among themselves, their heirs, successors, and assignees (and for any agents thereof), to the Restrictions as herein established (such that their interest(s) and/or possessory rights in the Restricted Property are taken subject to such Restrictions). Pursuant to California Civil Code §1471(b), all successive owners of the land are expressly bound hereby for the benefit of the covenantee(s) herein.

## ARTICLE II RESTRICTIONS

3. Incorporation into Deeds and Leases. Owner agrees that the Restrictions set forth herein shall be incorporated by reference in each and all deeds, and leases to Occupants, for any portion of the Restricted Property.

4. Restrictions on Use. Owner agrees to restrict the use of the Restricted Property in accordance with the restrictions set forth herein in order to protect the present and future public health and safety from potential harm to persons which may result from hazardous substances which exist on the Restricted Property. The Restrictions provided herein shall apply only to the Restricted Property. Owner agrees not to use the Restricted Property for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as permanently- occupied residential human habitation.
- (b) A long-term care hospital for humans. Nothing herein shall restrict use of the Restricted Property for any infirmary, medical aid station, or emergency medical care facility where there is no intent for any patient to remain in such facility for more than 24 hours.
- (c) A traditional public or private school for persons under 21 years of age. Nothing herein shall restrict use of the Restricted Property for any specialized training programs for adults related to then-existing facilities on the Restricted Property or the Site.
- (d) A day care center for children.

Additionally, Owner agrees to provide to the Department written notice at least fourteen (14) days prior to any excavations in the Restricted Property, which present a significant likelihood of disturbing the Hazardous Substances in the Restricted Property.

5. Notice in Agreements. Owner shall furnish in writing to Occupants and/or to the Owner's successor in interest to any part of the Restricted Property, as either part of another written agreement (e.g., a lease), or as a stand alone instrument, the following statement:

"All or a portion of the land described herein contains hazardous substances. Such condition renders the land and the owner, lessee, or other possessor of the land subject to requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and 6.8 of Division 20 of the California Health and Safety Code. This statement is not a declaration that a hazard exists and does not address the liability of any party."

7. Conveyance of Restricted Property. Owner shall provide notice to the Department not later than thirty (30) days prior to any conveyance of any ownership interest in the Restricted Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disprove, or otherwise affect such proposed conveyance, except as otherwise provided by law, by administrative order, or by reason of this Covenant.

## ARTICLE III ENFORCEMENT

8. Enforcement. Failure of the Owner to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department, by reason of this Covenant, to require that the Owner to cease any activity or use which violates any of the Restrictions and/or modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas, constructed or placed upon any portion of the Restricted Property) constructed in violation of the Restrictions.

9. Access for Department. The Department and its designees shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

#### ARTICLE IV VARIANCE, TERMINATION, AND TERM

10. Variance. Owner and/or, with the Owner's written consent, any Occupant of the Restricted Property or any portion thereof may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&S Code §25233 and/or other appropriate statutory authorization(s) then in effect.

11. Termination. Owner and/or, with the Owner's written consent, any Occupant of the Restricted Property or any portion thereof may apply to the Department for a termination of the Restrictions or other term of this Covenant as they apply to all or any portion of the Restricted Property. Such application shall be made in accordance with H&S Code §25234 and/or other appropriate statutory authorization(s) then in effect.

12. Term. Unless ended in accordance with the "termination" paragraph above, by law, or by other valid method, this Covenant shall continue in effect in perpetuity.

#### ARTICLE V MISCELLANEOUS

13. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Site, Restricted Property, or any portion thereof to the general public or anyone else for any purpose whatsoever. In addition, nothing in this Covenant shall be deemed to constitute a covenant, encumbrance, or restriction on the use of any property other than the Restricted Property.

14. Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the Parties and are not a part of the Covenant.

15. Code References. All references to Code sections include successor provisions, if any.

16. Department References. All references to the Department include successor agencies/departments or other successor entity.

17. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of San Bernardino within ten (10) days of the Covenantor's receipt of a fully executed original.

18. Notices. Whenever any person gives or serves any notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid certified, return receipt requested:

To Covenantor: Kaiser Ventures Inc.  
3633 E. Inland Empire Boulevard, Suite 850  
Ontario, California 91764  
Attention: Vice President - Real Estate

To Department: Department of Toxic Substances Control  
Region 4, Site Mitigation Cleanup Operations  
5796 Corporate Avenue  
Cypress, California 90630  
Attention: Project Manager of Kaiser Steel Mill Site

Any party may change its address or the individual to whose attention a notice is to be sent by giving such written notice in compliance with the provisions of this section.

19. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

IN WITNESS WHEREOF, the Parties execute this Covenant.

"COVENANTOR"

KAISER VENTURES INC.  
a Delaware corporation

Date: 5/11, 1999

By: Lee R. Redmond III

Mr. Lee R. Redmond III  
Sr. Vice President

STATE OF CALIFORNIA )

COUNTY OF San Bernardino )

On this 11th day of May, in the year 1999,

before me Patricia M. Williams / Notary Public, personally appeared

Lee R. Redmond III

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Patricia M. Williams



"DEPARTMENT"

CALIFORNIA ENVIRONMENTAL PROTECTION  
AGENCY, DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Date: May 24, 1999

By: [Signature]  
Hamid Saebfar, Chief  
Site Mitigation Cleanup Operations  
Southern California Branch  
Region 4

STATE OF CALIFORNIA )

COUNTY OF Los Angeles )

On this 24 day of May, in the year 1999

before me Robina Issagholian personally appeared

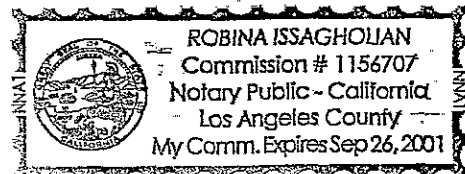
Hamid Saebfar

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

[Signature]



N 88 17' E

EXHIBIT "A"

291.26'

PARCEL 1

P.M. 14757

5.20 Acres Net

N 00°06'54" E 799.69'

N 01°02'43" W 735.02'

### Legal Description

Parcel 1 of Parcel Map 14757 as recorded in Book 183 pages 24 and 25 records of San Bernardino County, State of California

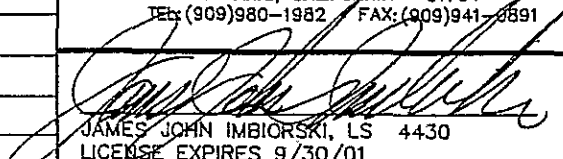
PARCEL 2



SCALE: 1"=100'

R=883.00'  $\Delta=20^{\circ}29'36''$   
L=315.83' T=159.62'

Napa Street

REVISIONS	PREPARED BY:	PREPARED FOR:
	ASSOCIATED ENGINEERS, INC.	KAISER VENTURES INC.
	3311 E. SHELBY STREET	
	ONTARIO, CALIFORNIA 91764	
	TEL: (909)980-1982 FAX: (909)941-0891	
		COUNTY OF SAN BERNARDINO
	JAMES JOHN IMBORSKI, LS 4430	MARCH 29, 1999
	LICENSE EXPIRES 9/30/01	